that. Are you suggesting that a lot of that savings is going into airing the public service announcements?

MR. MILLER: No, all I'm saying is that when you look at mandatory -- there's going to be a rating system -- there's mandatory children's programming. They run public service announcements. There is more dedication to the local market and localism-there's a big discussion of localism.

COMMISSIONER NESS: But in each of these things have they -- has -- has all of that increased?

MR. MILLER: I believe that localism, especially in terms of local news -- providing local news and providing local content for the local community has increased. Yes, I do believe that. I've seen that -- I've seen that myself.

COMMISSIONER NESS: Does anyone else want to comment on the topic?

CHAIRMAN KENNARD: Mr. Baker.

COMMISSIONER NESS: Okay, Mr. Baker.

MR. BAKER: Yes. We -- we also have to be careful how we define some of these things. And I know the Commission can't get involved in content specifically, but we talk about local news. Sometimes local news becomes info-tainment. You know, the lead story in the newscast is the true -- the true facts behind the movie of the week kind of thing.

And so I -- and yes, there may be some public service announcements, but they are no longer mandated as far as I know. And they are also very often at two o'clock in the morning. So -- so we have to look at the specifics when we start having that kind of discussion.

MR. GROSSMAN: I think there is hard data that you can find and I think it's important that you do that in studying, as I suggest, what has happened with the radio changes. Take a look and see whether news staffs, news reporters, news budgets have increased or decreased after large purchases. Same with television stations.

And if the radio news directors that I've interviewed are to be believed, in every case where that has happened, the staff level, the news, the budget for news reporting and news gathering has been cut.

MR. MILLER: And I would say that that's just the exact opposite of the television business. We've seen the local broadcasters actually increasing their news expenses dramatically.

COMMISSIONER TRISTANI: Do you have any statistics to --

MR. MILLER: Sure.

COMMISSIONER TRISTANI: -- show us that --

MR. MILLER: Yes.

COMMISSIONER TRISTANI: -- that you could give us?

And I mean specific as to station by station?

MR. GROSSMAN: After they've been purchased.

MR. MILLER: Absolutely.

COMMISSIONER TRISTANI: Particularly the news stations that are being rescued or the dormant stations because one of the things I've anecdotally heard is that, you know, some group comes and rescues a station that's dark, or what have you. And one of the first things they say is, "We're not going to be able to do local news." I don't know.

MR. MILLER: Yes. I mean, there is -- there was an extensive study done by the Association of Local Television that actually looks after all the 63 local marketing agreements that were done in the top hundred markets. And there are a number of cases --

COMMISSIONER TRISTANI: No, but I want -- I want -- I'm talking about a comprehensive not just some segments of the industry. But you're saying, "Categorically, I can tell you, Commissioners, that television stations are giving us more local news, not less." And I --

MR. MILLER: Well, I think there's more --

COMMISSIONER TRISTANI: -- I find that hard to believe.

MR. MILLER: -- there are more hours being put on the air and there is more money like the -- companies like I think you mentioned the A.H. Belo and Hersht Argyle and companies like this have realized that local news is the most important differentiating point that they have and are spending more money and more resources to try to deliver that differentiating factor to their local -- local audiences.

COMMISSIONER TRISTANI: Dr. Alger, could you address that?

MR. ALGER: Yes. Yes, what I've heard about A.H. Belo is -- is that they have realized something that I wish other group organizations would realize, that quality local news pays. But that's not the general pattern. In Mega Media, I have abundant testimony from the top ranks on down, saying quite the opposite.

Second of all, Mr. Miller mentions the -- more local news now. That didn't happen now, that didn't happen in the current environment. That happened quite some years ago that they expanded to those news hours.

And anecdotal evidence as well. You look at various stations-such as I did in just looking at the television schedule in Minneapolis-the WB network affiliate has in the traditional ten o'clock midwest late news slot-it has the Jerry Springer sleaze-a-thon rather than news shows. And I just have seen such abundant testimony that -- that I would have to disagree with my good friend here.

MR. SIDAK: Commissioner?

COMMISSIONER TRISTANI: Yes?

MR. SIDAK: The one study that I'm aware of that speaks to the question of the diversity of radio programming is one by Thomas Hazlett and David Sosa that was published in volume 26 of the Journal of Legal Studies called, "Was the Fairness Doctrine a Chilling Effect: Evidence from the Post-deregulation Radio Market."

And Dr. Hazlett and his co author -- Hazlett, of course, was a former chief economist at the FCC -- found a substantial increase from 1987 to 1995 in the diversity of radio formats. That's at least one attempt to try to globally, systematically measure the change in program diversity.

Now, you may quibble with the methodology. And I'm sure that there are other ways to approach it. But that's at least one -- one study that I would suggest you look at.

COMMISSIONER TRISTANI: Professor Fiss?

PROFESSOR FISS: I have no statistics. I don't even have anecdotes. But I would offer two cautionary comments. One -- and this maybe just reflects, or is another way of casting Mr. Baker's comment -- I think when you look at these statistics, you have to have some perspective on where the burden rests; where is -- what is the presumption that you're going to operate under?

And I suggest that in trying to answer this question of how do you allocate the burdens of demonstration of proof, that you be guided by not just public policy, but by what I believe to be Constitutional imperatives.

If you believe, as I think the Supreme Court does, that this bedrock policy that the Chairman spoke about is not just a policy out there in the air but has Constitutional moorings, I think that that is a very, very strong imperative that the burden be cast upon those who wish to demonstrate that deregulation will in fact enhance this Constitutional policy.

Secondly, I think you also have to keep in mind the dynamic quality of these statistics. You not only have to think of what the statistics are today, say, about the mixture between entertainment and news, but you have to sort of understand what the mix would be if a policy, a broad policy of deregulation, were adopted.

Now, I respect the comment that Mr. Sidak made a few moments ago about what the -- what the impact of the abandonment of the fairness doctrine has been on television. But I -- I would be somewhat skeptical and suggest that perhaps abandonment of certain traditional policies of the FCC which sought to serve the end of diversity has not in fact had that effect.

MR. MILLER: Yes, just-just one other point. In the New Haven market where you live, there is a -- a station that had a 40-year -- it was dark for 40 years. So there was a license in the market that never was built out. And LIN television basically put this station under its wing, helped bring it up, is absorbing operating losses as we speak, and has now introduced a WB brand new voice into the market in the top -- one of the top 20 markets.

And you're saying, "Well, how can a WB -- how-how can a market that big not support another station?". So a lot of the ownership rules that I'm talking about, the changes in ownership rules, are to address your point.

PROFESSOR FISS: But I --

MR. MILLER: How do you increase -- how do you increase the number of voices -- can you have an increasing number of voices and the appearance of concentration at the same time? And I don't -- I think that in certain cases, it can be extremely beneficial. A lot of the LMAs that we have seen are creating new news programs as well, in local markets.

PROFESSOR FISS: But I think Mr. Grossman's point is the fundamental one. There is no issue, I think, on the entire panel that waiver, exception, may be appropriate, because efficiency can be an important instrument for diversity. And if that could be demonstrated and the burden would be on those wishing to get out from under the rules, I suspect that there is no one in this room that would deny the possibility of waiver or exception.

MR. SIDAK: I'll dissend because I do not think that the proper way to structure a rule is to say you can't do it unless you come forward and affirmatively prove under a waiver that you can do it. Everything is illegal unless we allow it. I mean, the general rule under an antitrust regime is everything is lawful unless it's unlawful.

COMMISSIONER TRISTANI: But we're not under an antitrust regime here at the Commission. I mean, with no disrespect.

MR. SIDAK: Well, I'm arguing --

COMMISSIONER TRISTANI: We're here under the public interest which is still in the lie --

MR. SIDAK: But I'm arguing, Commissioner --

COMMISSIONER TRISTANI: -- we were reminded of.

MR. SIDAK: -- that the -- that the more appropriate standard to apply is an antitrust standard.

CHAIRMAN KENNARD: Well, I would like to follow up on that if I might because a couple of you have made this argument, that we should have the antitrust laws basically govern this marketplace. Mr. Mikkelson, Mr. Sidak just made this point. And I think it's sort of an interesting one.

Particularly, when you look at this marketplace and you see that it is -- a lot of the relationships have been governed by regulation. Not only the local ownership rules, but the relationship between the cable industry and the television industry; the relationship between the television programming industry and the broadcast networks.

And I guess I'm having a little difficulty seeing how antitrust laws would be sort of the panacea here. For example, Mr. Mikkelson, you seem to be the strongest advocate for this points of view in your testimony. Do you think, for example, that we should have the antitrust laws substitute for a must-carry regime in our country as you've suggested that they should substitute for local ownership rules?

MR. MIKKELSON: I can't say that I've really formed an opinion about that subject, Mr. Chairman. My -- my basic point was that we have ways of thinking about competition issues that are widely respected and widely used. And it seems to me we don't have the analog on the diversity side.

The suggestion has been made in some of the previous comments, well, you know, what has been the effect; how has diversity been affected by various things. To me, such a study would be very -- very wise and very useful. But it would require that we be able to define exactly what it is we mean by diversity.

I think it's not equated with news programming any longer. And if it is, that's something that we could measure. When we know exactly what diversity is, then perhaps the consolidation of radio stations would provide an opportunity where we could measure that, what has happened.

But as long as we don't know exactly what it is, don't know how ownership affects it, and fundamentally don't know when we have enough, then it seems to me we don't have a good standard there to appeal to.

CHAIRMAN KENNARD: Mr. Baker?

MR. BAKER: Well, the antitrust arguments work to a degree. But they work in the realm of economics. And there is economic diversity and then there is the -- there is the Constitutional and Supreme Court kind of diversity of antagonistic sources and totally different sources of public viewpoint. And that's where it strikes me you have to step in because these economic arguments are good and they're solid. But they are only in my opinion part of the picture.

MR. MIKKELSON: I'm not sure that the owners are really a source of viewpoint. Potentially they are. But the sources of viewpoint that we have are the people whose views are being aired, not fundamentally the owners. So there are --

PROFESSOR FISS: Recognizes that the structure of ownership has an impact upon the views that are expressed.

Is there anyone who doubts that?

MR. SIDAK: Well, that argument works two ways.

PROFESSOR FISS: Certainly.

MR. SIDAK: The First Amendment then is clearly impacted by structural rules, is it not? Absolutely.

PROFESSOR FISS: Yes.

MR. SIDAK: I'm glad we agree on that.

CHAIRMAN KENNARD: Yes. That's one of the few things I've agreed with, what you've said, Mr. Sidak.

MR. GROSSMAN: May I make a quick observation because I think that was a very interesting question, the antitrust. If -- if the basic law of this country were to auction off this incredibly valuable spectrum, then there would be no need for an FCC in this area and antitrust should obtain.

But since you are in effect allocating millions and millions and in some cases hundreds of millions of dollars worth of spectrum, there are other criteria that intrude.

And that's the reason for the whole policy, broadcast policy that requires the Federal Communications Commission in the first place. And that is why you have other criteria besides antitrust having to do with the public interests that dominate at this point and should continue in my judgement to do so.

CHAIRMAN KENNARD: Mr. Grossman, do you believe we should have a different public interest standard for license -- for the different licensees we have or should we apply the same public interest standard to all licensees?

MR. GROSSMAN: I think myself -- and this may surprise you -- it's time to change that whole standard. I don't think that the public interest standard for commercial broadcasting really obtains in any meaningful way any longer except for the three hours of children's programming a week.

I would much rather see a public -- none-for-profit public service broadcasting or a telecommunications service that has -- exists to serve the public interest and have in effect the spectrum auctioned off and the money go to the public treasury and let the commercial broadcasters do what they will. But that's such a radical change that it's not what you're facing here at all and not likely to have happened.

CHAIRMAN KENNARD: Do any of the other panelists have any view on whether the Commission should apply a single public interest standard or have different standards for different licensees?

MR. BAKER: I would argue a common public interest standard. I think that's the best public policy, not having a Grade A and Grade B public interest. I don't think that works. But that's just my personal opinion.

MR. GROSSMAN: In radio, to all intents and purposes, there is no way you can enforce that, observe it, or deal with it. And increasingly, as digital television comes along with thousands of channels operating and different kinds of industries, I think you're going to have an even more difficult time. And that's why I think it's time to take a whole re-examination about public policy regarding licensee assignments.

COMMISSIONER POWELL: I would like to ask a question with regard to -- Mr. Mikkelson, I hope I'm pronouncing your name correctly -- but mentioned that one of the greatest problems here is that there is no diversity HHI index.

There is no commonly agreed to basis for measuring whether you have diversity, how much of it is enough and whether the structural policies you're pursuing are adequate other than sort of visceral -- what I find to be largely visceral and sort of subjective judgements about these things. We've touched on it a number of times here. You don't like Jerry Springer, but it's one of the most popular shows on TV. I don't quite know what to do with that.

MR. ALGER: I don't like Jerry Springer, but I didn't say --

COMMISSIONER POWELL: No. No, no. I know who I'm pointing at. And, you know -- you know, and I'm very, very uncomfortable with the suggestion that the five of us are supposed to make judgements about what we should teach our public and not teach them with regard to what they'll embrace. And that -- that is a disturbing notion that I think is much spoken to by the First Amendment as -- as Professor Fiss' suggestion that there is an affirmative obligation under that provision.

But that said, something called diversity of voices and something called diversity of choice seems to be important I think across the board to all of us. But what I want to know also goes to some of the cross-ownership rules which is if our focus is on either choice or voice, what is the propriety of considering the full realm of outlets for the provision of those varying viewpoints to the public.

I'm often troubled that we shift terms when it's convenient. These other mediums are in when it helps an argument and they're out when they don't.

But truth be told, as my family sits around the house, we have any number of ways to get any number of sources from the headiest high-brow sorts of information to the lowest of the low if you think that's what Jerry Springer is. And all of those mediums I will tell you in my opinion can produce the full range of all of them.

You can find plenty of magazines that will provoke intellectual thought more dramatically than any television program I've ever seen as well as the sleaziest of sleaze. You can find any internet site that can do the same thing. You can find any radio station that can do the same thing.

So if people could address how they think we should factor in other outlets when considering the importance of broadcast, in particular, on diversity. And I'll let anyone answer.

MR. ALGER: Since you were sort of attacking my statement about Jerry Springer, may I clarify? I tried to make this very clear. Whoever wants to watch Jerry Springer is perfectly fine with me. My point is -- is the provision of news is the core responsibility of the Commission and is the core of the First Amendment issue. And I was saying that was in the place of the news -- the standard mid-west late news time.

And there is no news -- as I mentioned, I've written in my testimony, there is no news on that station or the others of that sort in the Minneapolis market. That's my point. Whoever wants to watch Jerry Springer is fine. I find it offensive, but others may not. That's a First Amendment and you're quite right. Okay?

So let's -- let's be clear. I'm talking about the provision of news as the core most important function of -- of broadcast TV which remains the most universal mass medium of access to all Americans, not just some. That's my point.

PROFESSOR FISS: Commissioner Powell, could I try to answer specifically? And I say this with due respect. You should not --

COMMISSIONER POWELL: This is when you're really in trouble.

PROFESSOR FISS: Right.

COMMISSIONER POWELL: Especially from a professor. But --

PROFESSOR FISS: You should not -- I -- I think it would be irresponsible for you to answer the question you posed based on your experience sitting in your house with the diversity of outlets that you have. There is -- all of us could recognize this emerging new sources of news and information; cable, internet, satellite transmission, magazines.

But the essential point of Turner Broadcasting is to understand that there are significant portions of Americans who are dependent on over-the-air broadcasting for their understanding of the world around them. They don't have these alternatives. Now, it's --

COMMISSIONER POWELL: But -- but -- but --

PROFESSOR FISS: -- true that these alternative markets compete with broadcasting or these alternative outlets compete. But I don't think they replace them.

COMMISSIONER POWELL: Let me take issue with that for a second. First of all, I by no means suggest that I make decisions based on my own personal experience. And we will -- we will turn to facts and evidence to support -- just as I require of all of you if you are going to make the arguments.

But I'm not prepared to say that there isn't a plethora of newspaper and magazine sources available to a good number of people. Seventy-three percent and growing, a percentage of Americans have access. Somewhere in the middle between what we're saying is the truth.

But my question really is not so much whether you should -- should take the most fruitful market and use that as your moniker, but to the extent that you should evaluate the presence of those alternatives nationwide in making the choice.

And I also would urge people to address the issue of it's absolutely right that a not insignificant portion of Americans rely on broadcasting. And it's absolutely right that that's still the most valued source. It's not always clear to me why it's absolutely right that that would stay the case and will always or should be by right the case.

Not that I dispute that we might come to that conclusion. But, you know, part of that is the presence of television's head start and the legacy of that media, respective of the provision of these things which has been in large measure eroded over time with the advent of things. And so I wouldn't be surprised if there will come a day that some commission will be seeing numbers that are dramatically different.

And what I'm wondering about is if it wasn't a third, if it was ten percent, rules have a way of lasting for a long time. I thought it was very interesting someone said be careful because, you know, these things -- you know, rules themselves when put in place are hard to repeal in the future, as well. And so I just wanted to clarify.

MR. MILLER: Commissioner, I mean, the thing we look at is that it goes right to the heart of what you're saying. In 1980, the average household had ten viewing options. That was it.

Now they have over fifty. And that's less than twenty -- now, that doesn't include magazines, newspapers and all the other media that are also exploding in terms of everybody is starting to go to the tiniest part of the demographics, serving individual demographics down to very minute segments at this point. So there is tons of that.

In fact, we actually wrote a piece called, "Will Choices Out-weight the Voices?", when we were looking at local ownership rules; should duopoly and LMAs be permitted. And we had one thought that there was -- once thought that there was going to be a scale. Is it more offensive to have a -- a one-owner control, effectively control two televisions in a station or is it better that we now have a new viewership choice in that market?

And we thought that there would be -- you know, one would -- one would weigh in higher. We found out that actually both can occur simultaneously, so we didn't have to take sides.

In the cases of a lot of the LMAs and duopolies we see -- or not really duopoly at this point, but LMAs -- we see that a new entrant is brought in which gives people like the people you're talking about, Mr. Fiss, the opportunity for people, over-the-air broadcast dependent people have another viewership choice.

And at that same time, we really haven't affected the marketplace that much because the average LMA takes four percent of the revenue in the market and three percent of the viewership share. So we've added a new -- we've added a new voice, and we haven't really undermined competition in the marketplace.

MR. BAKER: But it is possible for the opposite to happen. And that is, as we look at this vast array of choices and if we look them, especially the cable networks, many of them are all commonly owned, and are those necessarily different voices.

You also talk about the leverage of cross-promotion. You know, you see that in -- you see that in radio markets -- in radio stations. There may be a lot of radio stations. The ones that are commonly owned tend to have the ability to sell together, to promote together.

Those are wonderful economic efficiencies, no doubt. But it also drives a huge audience to that segment and gives them a voice that may be louder than the other voices and could be anti-competitive in the sense of a smaller player coming in.

MR. GROSSMAN: Can I make a quick response, Commissioner Powell? There are ways of judging this or testing on -- on a non-content basis which I think is what you're trying to get at and which I agree with.

You can find out before radio stations are sold and the year after, has their news department got a larger budget or a higher budget? Are there fewer or more people in the news division? Is there more or less local live programming; more or less local public affairs programming? Never mind how good or bad it is or what it has.

But I think those would be -- and similarly, with before and after television station, local television stations have been sold. What has been the trend? I think it would be very useful to find out. I don't know the answer to that, but I have my suspicions based on my conversations with the news directors of both television and radio before and after they've been sold.

And I suspect you will find that those kinds of outputs have diminished rather than increased. And that may help you in your decisions.

CHAIRMAN KENNARD: Mr. Alger.

MR. ALGER: Yes. Commissioner Powell had mentioned the rules put in place are often hard to repeal. May I respectfully submit that massive concentration of media across most of all sorts of media with massive lobbying resources and so on is a hell of a lot more difficult to undo than rules in place, especially when those media control, as I say, wide swaths.

Chapter 3 in Mega Media -- go out and buy a copy, everybody -- documents Time Warner, Turner, Disney, Cap Cities, ABC, Rupert Murdoch's News (phonetic) and so on. It's extraordinary the range of media that are controlled by eleven or twelve of these corporations which brings me to another point.

Mr. Baker mentioned the cross-promotion. One thing I would like and we need more research on -- and I said that in the book -- one thing I would -- I would like the Commission to think about is does the existence of conglomerates distort the competition in local markets.

The gist, as I understand it, of the -- the theoretical foundation of the Telecommunications Act and, indeed, of classical economics is that there is competition in a specific market for a specific service. But if, in fact -- and that's -- and the competition is based on quality and price. That's why it's supposed to be efficient and effective. And that's how you send market signals.

But if in fact you have a conglomerate bringing in from other parts of the country, other geographical markets, and from other product markets including industrial markets on which they may have monopoly control in, can they not only massively cross-promote -- which we're seeing ABC, Disney, etcetera, but also can they cross-subsidize to a very significant extent and, hence, again, drive out minority ownership.

We're seeing evidence of that -- the ownership of eight stations in Chicago. I point out in my written comments that in Chicago, for example, you have three mega-media corporations that control two VHF -- prime VHF TV stations, fifteen or sixteen radio stations, the prime newspaper in the area and so on. That's a great deal of cross-media ownership, a great deal of concentration; not diversity.

So I would encourage the Commission to think about that core economic concept that we're supposedly -- the market mechanism that's supposed to be efficient and effective is based on the idea of sending signals based on competition on price and quality of a particular product.

But if you bring in massive cross-promotion, if you bring in massive cross-subsidy, does that distort that market mechanism which the Commission is -- is here to -- to try and discharge based on the Telecom Act.

CHAIRMAN KENNARD: Mr. Alger, that will be the last word on this panel. Thank you all very much. It was a terrific discussion. We will recess for ten minutes and reconvene at 11:20 for our next panel.

(Whereupon, a brief recess was taken.)

CHAIRMAN KENNARD: Okay. We are ready to begin our next panel this morning. Now we are going to hear from people who are actually out in the marketplace every day, operating under the ownership rules that we administer here at the Commission. And we're also going to hear from a public interest advocate who watches very closely what happens in the market place.

We're going to begin with Jeff Marcus. And I'll remind the panelists that we are on a fairly tight time schedule. So please keep an eye on our timekeeper. And please introduce yourselves and give us your affiliation. Jeff.

MR. MARCUS: Good morning. I am Jeff Marcus. I am the President and CEO of Chancellor Media, the nation's largest radio company. I am formerly Chairman and CEO of

Marcus Cable which was the largest privately owned cable company. I have not written a book yet.

It is both ironic and apt that I'm here today representing the National Association of Broadcasters. It is ironic because until last summer, I had spent my entire career, thirty-one years, in the cable industry building cable systems which competed with broadcasters.

And it is apt because the subject of this hearing is media competition. And there can be no better informed witness than someone who has helped build the most successful and relentless competitor the broadcast industry has ever faced; one which has completely transformed the competitive media landscape.

The pace of change in media competition is nothing short of breath-taking. And NASA and satellite industry has become a major provider of video. The internet has exploded and the ability to deliver audio and video signals over computers is growing ever greater. The cable industry is changing to digital technology that will dwarf today's channel capacity.

To negotiate these developments will require extraordinary agility and flexibility. It is in this environment that we examine the two venerable regulations, the television duopoly and one-to-a-market rules which are the subject of this hearing.

These two rules are glacial remnants of a regulatory ice age. They stem from an almost forgotten time when a few TV and radio stations were the electronic media. They are the product of regulatory fears that have no place in today's market.

Eight years ago, the Commission's Office of Plans and Policy found that the irreversible growth of multi-channel competitors would lead, without a change in the regulatory environment, to a reduction in the quantity and quality of broadcast service.

The record shows that the duopoly rule and one-to-a-market rules are counter-productive and destroy, not advance, your goals of competition and diversity. The duopoly prevented dozens of stations from being launched and condemned others to broadcasting with second-class signals and even worse programming.

We know this because we can see the results of the Commission's experiment with two station operations under the local marketing agreements, or LMAs. Nearly two-thirds of these LMAs involve failing or struggling stations. Nearly all the others put new stations on the air.

Nearly two-thirds of the LMAs provided outlets for the emerging WP and UPN networks. And over half the LMAs were carrying new local news programs, a topic debated this morning. Nearly half resulted in a substantial upgrade in technical facilities.

The efforts of LIN Television, soon to be a subsidiary of Chancellor Media, are typical of these LMA pioneers. Through an LMA, LIN saved a failing station in Battle Creek, Michigan, restoring the only local news programming and preserving a local outlet which even today would not be viable on a stand-alone basis.

In Norfolk, a LIN LMA enabled the transformation of a minimum facility home shopping channel to a full service WB affiliate. And in Austin, Texas and New Haven, Connecticut, LIN LMAs launched stations which had been unable to obtain adequate financing.

Perhaps most important, LMAs show how changing the duopoly rule can strengthen broadcasting as a competitor to multi-channel providers such as cable and satellite. When I ran a cable company, it seemed to me that cable had two main advantages over broadcasting: dual revenue streams and the ability to spread programming and other costs over multiple channels.

Now that I am in broadcasting, I see how hard it is to overcome these barriers. And while I am proud of our free, over-the-air system, I don't understand why the FCC should restrict free broadcasters' ability to compete with paid competitors who do not face the same restrictions.

The one-to-a-market rule has no better

justification. Even when it was adopted, the Commission could not point to any actual problems that the rule would remedy. The many grandfathered radio-TV combinations and the waivers that the FCC has granted since 1996, like LMAs, allow us to look into what a world without the rule would be. And the answer is that no reduction in service or diversity has been caused by radio-TV cross-ownership.

Instead, radio and TV stations have strengthened their service to the public by realizing efficiencies from joint operations. If the radio and television stations do not compete, there is no justification for our cross-ownership rule.

The Department of Justice and recently the FCC has looked only at radio when examining proposed transactions. Surely the Commission cannot have it both ways, restricting radio ownership by looking at radio only, but barring cross-ownership based on an entirely different market.

Certainly there is no evidence, nor could there be, that the one-to-a-market rule in operation results in greater competition or diversity of programming in any market. The Commission should therefore heed the advice the OPP gave it years ago and get rid of rules that reflect only a bygone era of media competition.

The FCC should repeal the one-to-a-market rule. It should reform the TV duopoly rule to permit common ownership of two TV stations where at least one is a UHF station or where the combination has no likelihood of diminishing competition.

However, if you should not take this course, the investments, the millions and millions of dollars of investments that broadcasters have made to improve service to the public should not be jeopardized. And the existing LMAs and one-to-a-market waivers should be grandfathered.

And I would like to make one additional observation.

CHAIRMAN KENNARD: Mr. Marcus, I will ask you to wrap up.

MR. MARCUS: Chancellor Media and many others in the broadcasting industry share the Chairman's concern about the impact of current and future consolidation, however inevitable, upon the ability of diverse new entrants to gain a successful foothold in broadcasting.

We believe strongly, however, that such diversity cannot be manufactured through the imposition of non-economic ownership restrictions targeted at narrow media sectors. And a more plausible solution is to facilitate access to capital.

Chancellor is very optimistic that it can, working with other substantial broadcast organizations and Wall Street concerns, develop a significant venture capital fund to facilitate the development of viable new broadcast entrants. But it could only do so in a regulatory environment that enables broadcasters themselves to remain competition. Thank you.

CHAIRMAN KENNARD: Thank you very much. Mr. Frank.

MR. FRANK: Good morning. The first thing you will notice is that I am not Bill Rine. I am Alan Frank. I run the Post Newsweek Station in Detroit. To Bill's great disappointment, to your disappointment, to mine, as well, he can't be here due to a longstanding, unbreakable commitment.

Because of his strong convictions about duopoly and LMAs, Bill very much wanted to be here and he made great efforts over the past month to accommodate the shifting dates for this hearing. But I'm very pleased to be here because I share Bill's convictions on this issue.

We believe the controlling first principle is localism, something that's old and emptied of meaning by having been used too often as a slogan or overtaken by new developments. But localism is vibrant and substantive, and remains the soundest available guide for resolving various broadcast issues. Besides, it is the law.

Consistent with this Congressional mandate, our country's television service is universal, free and locally and nationally diverse and competitive. It is the envy of the world.

From a viewer's perspective, localism is local news, coverage of political figures for the public they represent, and station support of local charities and local civic activities. The range and shear volume of these contributions to our communities are staggering, but too often go unrecognized.

From a programming perspective, localism is the balance of network and locally produced or selected programming, a mix that we affiliates tailor to the audiences in our communities. From a regulatory standpoint, localism is Section 307 of the Act, the table of channel allotments and the propagation, interference and other technical rules and principles that provide the structure for local service throughout the United States.

Congress and the Commission have been faithful to localism principles. The table of DTV channels, the decision to uphold the Grade B standard, the preservation of the thirty-five percent national cap., the FCC's refusal thus far to water down the affiliate's right to reject network programming, and Congress' insistence on reasonable DTV cable carriage rules are all examples of the continued vitality of the localism principle.

We believe that the localism principle requires a meaningful duopoly rule to assure a diverse and competitive local marketplace. It is healthy to have different entities owning and controlling different broadcast outlets in a market. It leads to economic programming and viewpoint competition.

If a market has six outlets, it seems obvious that the interest of competition and diversity are better served id six different entities own and operate them than if one or two entities each owns and controls two or more stations in the market.

To provide consistency and predictability, the Commission properly codified the -- this presumption into the duopoly rule, stating that its purpose was, quote, "to promote maximum diversification of program and service viewpoints and to prevent undue concentration of economic power contrary to the public interest."

We agree that the Grade B standard for the duopoly rule should be relaxed and is unrealistically stringent. We support the Commission's proposal that generally stations should not be co-owned if their Grade A contours overlap or if they are in the same DMA.

Because the distinction between UHF and VHF is becoming outmoded and will expire in the digital world, it should not be a basis for exceptions to the duopoly rule. Exceptions might, however, be permitted for failing stations and other special circumstances.

Most LMAs are simply a way of evading the duopoly rule. Recognizing this fact, the Commission decided in the radio environment that if one station duplicates more than fifteen percent of the programming of another station, it should be treated for purposes of the duopoly rule as being co-owned. Nobody has given any good reason why that logic shouldn't apply to television LMAs, as well.

As for grandfathering existing LMAs, shams, regardless of when they were entered into, should not be grandfathered at all. If LMAs entered into after November 1996, when the FCC put the industry clearly on notice that LMAs were suspect and should not be relied on, should be grandfathered for no more than a year.

The FCC's statement in the November 1996 notice that intended to grandfather pre-existing LMAs for the remaining length of their original terms should be honored, but only for three to five years. Any more than that would reward over-reaching.

These constitute reasonable, even generous periods for broadcasters to bring themselves into compliance. After all, the radio rule, which is based on the same principle, has been in effect for seven years.

Some advocates for gutting the duopoly principle also believe in localism. Some, however, are simply after short-term dollars and have no regard for the impact on the local television system. For us, the genius of our system is localism. And the duopoly principle is essential to preserving it. Thank you.

CHAIRMAN KENNARD: Thank you very much, Mr. Frank. Mr. Yudkoff.

MR. YUDKOFF: Good morning. My name is Royce Yudkoff and I am Managing Partner of Abry Partners. I am also here today on behalf of ALTV, the Association of Local Television Stations.

Abry Partners is a Boston-based private equity investment firm which manages 825 million dollars in equity capital dedicated to investing in broadcasting and other media. We acquire under-performing broadcast stations in small and medium markets, and improve their performance by upgrading programming, news, staffing and signal coverage. Such investments lead to better service to the public.

Abry currently holds controlling interests in three television groups, one of which is in the process of being sold. Our two remaining television companies, NEX Star and Quorum, own and operate eighteen television stations.

Since 1993, we have been involved in several television LMAs, each providing valuable public interest benefits. NEX Star and Quorum are now involved in two LMAs. NEX Star owns WJET TV, Erie, Pennsylvania, the hundred and forty-second market.

NEX Star took over an existing time brokerage agreement for Channel 66, WFXP in Erie. FXP is a stand-alone Fox affiliate in a market this small could not survive. With the LMA, FXP now broadcasts a local 10:00 p.m. news, five days a week, and provides Erie with a full schedule of Fox programming including Fox News Sunday.

Last December, FXP broadcasted a local high school football play-off game. We made it possible for many local fans to see this game, including grandparents of players. As a stand-alone station, WFXP would have had neither the equipment nor the personnel to undertake a project like this. Our future plans for WFXP include expanding its local newscast to weekends.

The benefit of an LMA is that it allows small market broadcasters to economize on expenses that do not impact the public in order to provide the public with more that is directly on the screen. Rather than preach to you about this, let me share with you our economics.

Erie, Pennsylvania has four commercial TV stations sharing 13.2 million dollars in net revenue each year. A solidly-run Fox affiliate will capture about fifteen percent of that, or two million dollars in revenue. But it costs of that 2.9 million dollars to run a bare-bone, small market Fox affiliate with local news. It costs this much because our costs are fixed.

The electricity to run my UHF transmitter costs the same as in a big market. So does the gasoline for my news trucks.

How does a broadcast operator fix this problem of losing $900,000.00 a year? The station can't cut administrative costs by declining to pay its telephone bill. It can't reduce its sales force without reducing revenue. It can't cut engineering expense by shutting off the electricity.

What it does is it eliminates its local news and it cuts its locally originated programming expense to get to break-even. What an LMA allows us to do in contract is to cut expenses that are irrelevant to the public. We can use one building, not two. We can consolidate certain selling expenses. We can share maintenance engineers and production equipment, while becoming more attractive in the areas the public wants to see.

For example, our other company, Quorum Broadcasting, recently acquired KSVI TV, Billings, Montana, the hundred and sixty-seventh market. With that acquisition came an LMA with W -- with KHMT, Harden, Montana, the market's Fox affiliate.

KHMT could not sustain itself as a stand-alone station. In fact, that station was off the air from 1993 until the middle of 1995. Now under the LMA, KHMT provides the market with over-the-air delivery of all Fox programming including Fox News Sunday, plus a great deal of support for local activities.

One example is KHMT's Teens Now, a series of vignettes dealing with problems encountered by local teenagers, coupled with a monthly magazine distributed through the schools. Last year we contributed $180,000.00 of public service announcements to local community activities on that station.

KHMT's over-the-air coverage is still much less than the other stations in the market because they cover this geographic vast area with numerous translators. We are committed to spending several hundred thousand dollars in 1999 for translators and microwave links in order to improve KHMT's service to the public. We obviously are preparing for a transition to digital and the required investments.

It's clear that the LMA in Billings is serving the public interest by providing for an additional free over-the-air station that simply would not otherwise exist. It is just as clear that there has been no harm in the market due to the LMA. In fact, in 1998, the combined share of revenues of these two stations was less than one-third of the market's revenues.

I focused on small markets. But the record before you demonstrates the benefits of LMAs and markets of all sizes. These combinations should not be terminated. To the contrary, the opportunities to improve service through local combinations should be open to all. The TV duopoly rule should be relaxed to permit ownership of two stations in a market. Given the fierce competition from multi-channel providers, it makes little sense to limit the future of free over-the-air television to a single channel.

CHAIRMAN KENNARD: Thank you very much. Our next witness hardly needs introduction. Mr. Wonder.

MR. WONDER: Thank you. Thank you very much, ladies and gentlemen, Commissioners. I would like to share some of the notes with you. And I will make sure that you have the complete statement in speech form before I leave D.C.

I am Steven Morris, professionally known as Stevie Wonder. I am an artist. I bought a radio station in 1979 because I understood and valued the power of radio. As an artist, I appreciated the marketing power of the airwaves. As a student of social justice, I witnessed the power of and the reliance of mass communications.

When I bought KJLH, it was the only minority-owned radio station in the Los Angeles area. I bought a piece of history, as KJLH is the first black-owned radio station west of the Mississippi. This history is more precious now than it was then. This purchase was for the specific purpose of continuing to provide a voice to a community that had been unheard. KJLH was designed to be the eyes and ears of a people who lived in the shadows of Big Brother and big business.

My vision was to join an ever-growing collective of minority-owner entrepreneurs who understood the power of this medium. Twenty years later, I look into the future and I'm reminded of the past. KJLH is a stand-alone, Class A FM station fighting to survive in the country's second largest market. The evolution of regulation and de-regulation has brought us full circle.

Twenty years ago, minority owners of radio stations were the rare breed, yet a species developing and becoming strong and powerful. Today, the minority owner is again rare; now, an endangered species pursued by large corporate predators who consume the single and small owner.

Consolidation of radio ownership has made it difficult, if not impossible for the single owner. Competition with conglomerates who own several stations in a single market does not allow for fair access to advertising dollars. This is particularly true when conglomerates pursue a format that has been traditional domain of the minority owner.

Survival becomes a game of deep pockets. Often many single owners cannot afford to survive. In a scheme of free enterprise, I suppose this is fair game. However, control of the eyes and ears of the United States has never been about economics exclusively.

History has taught us the danger of monopolistic control of the means of the communication. Legislators consider these dangers. And even in this era of de-regulation and laissez faire, the public interest is still protected in the Communications Act.

The public interest cannot be protected when waivers are granted to allow multiple-station owners to own more stations. How are the single owners to compete with this -- the owners who stand to own more than nine hundred stations? Consider the value of the single radio station owner, particularly the ethnic minority owner.

Ownership diversity makes a difference in the mission of the station. This is lost when but a few businesses own almost everything. Different people have different ideas. During the unrest of the '60s and the '90s, my station had a special voice that served and affected the reality of despair and frustration in our community. Our messages helped heal and unify the community.

A simulcast between KJLH and Radio Korea was designed to dissolve tensions between the African American and Korean communities. The station was a beacon of hope for all of Los Angeles. And during the uprising of 1992, the studio stayed open in the midst of turmoil and violence. People came day and night to use this medium to sooth the community.

KJLH won the Peabody Award in 1992 for the quality and the responsiveness of our programming during this crisis. Minority single owners have a personal motivation to provide this kind of service for the public interest.

Our concerns are not driven by remote stockholders who are looking at the bottom line for return on their investments. Our concerns are not dictated by the Dow Jones, but by the Mary Joneses who rely on our station as their source of information and entertainment.

Public interest demands and public interest requires the protection of stations who stand alone like the dots in a Pac-Man game destined to be gobbled up by the voracious conglomerates. The big owners want more. Now they want TV and cross-ownership of TV and radio.

Whose interest is served by allowing television stations to acquire radio stations? Can we honestly say that public interest is served when we stand mute? Can we stand mute and watch the single minority station owners to be devoured by the relaxation of ownership rules? What is the standard?

When do you say that a company has enough? Is four hundred not enough? Are nine hundred stations sufficient? Are you contemplating a future where one or two companies can own all the stations? Is that not the script of some scary science fiction book we read as children?

Can we look in the future and see the voice of the people reflected in our precious airwaves? Or should we follow the stock market to understand what we hear and see?

It is in the power of this Commission to protect the public interest. As a minority owner and a member of the National Association of Black Owned-Broadcasters, I strongly urge you to stop the grabbing of multiple blanket ravers, stop the consolidation and remember the community that has placed its trust in your hands. I thank you very much. God bless you.

CHAIRMAN KENNARD: Thank you. Mr. McCarthy.

MR. McCARTHY: Thank you, Chairman Kennard and Commissioners. I'm Mike McCarthy, Executive Vice President and General Counsel of Belo Corporation.

At the outset, let me say that there is at least one thing said by the previous panelist that I agree with and that is all the nice things said about A.H. Belo Corporation. But it's by no means just Belo.

And Commissioner Tristani, we commissioned a study for the Gore commission that would give you some empirical information about the non-entertainment programming provided by at least the network affiliates in several markets which I would be happy to discuss during the question period.

Belo has been in the media business for a hundred and fifty-seven years. We are the owner of seventeen television stations, reaching 14.3 percent of the nation's households. We also own six daily newspapers with the Dallas Morning News as our flagship paper.

We operate LMAs in four of our television markets and believe we add considerable public interest value and editorial diversity in the markets where these LMAs operate. But while I would be pleased to answer questions about these LMAs, I would like to confine my remarks to the Commission's television duopoly rule.

While the television business today faces an extremely challenging competitive climate, Belo sees numerous opportunities to develop new businesses as extensions of our traditional local TV franchises. We are doing this by focusing on our major strength which is the hallmark of the structure of American television regulation.

We are licensed to serve local communities. Television stations are the only free local video services in the United States. We are key suppliers of quality local news and information to viewers.

To thrive in the burgeoning multi-channel university, our stations have to strengthen and extend their local news and information franchises, to find more outlets and provide re-purposed and in most cases, differentiated franchised news programming. It's the only way we will maintain our viewer and advertiser bases.

Right now, Belo has joined us by programming cable news channels in our TV station markets and operating for LMA stations. Belo has two twenty-four-hour regional cable news networks, one in the northwest and one in Texas. These networks provide informational programming different from that broadcast over our stations in those areas.

Three of our four LMA stations have their own local news and all four have locally originated programs. But our ability to program additional local outlets, like other television stations, is strictly circumscribed now by the FCC with the prospect that we may not be able to do anything more at all.

Even as we weigh these limited options, our video competitors keep forming ever-larger, more formidable business combinations and alliances. Cable companies continue clustering their systems. Time Warner is now the owner cable provider in Houston, San Antonio and Austin, Texas, having exchanged cable systems in other markets with TCI and a new joint venture.

Now, Time Warner and TCI/ATT, which already provide myriad news and information services into U.S. homes, proposed to provide American households with local telephone businesses and high speed internet access. The RBOCs keep buying each other, adding cable and internet programming services to their wired homes.

Public utility companies are also beginning to provide programming into U.S. homes over their utility wires. And the satellite business is merging into fewer companies and proposing through signal compression more channels.

Comparable business alliance opportunities are unavailable to local TV stations. While new video outlets on cable, satellite, internet and telcos are exploding onto the competitive horizon, TV stations have to exist under a regime of scarcity-based ownership regulation.

The phrase, "an abundance of media outlets", has become an understatement. At the very least, thousands of web sites with streaming video are created every day. Remember that local television stations are the only service providing one-third of America with free local over-the-air news and information. We need the same loose regulatory considerations afforded cable television and telephone companies to expand our own business and programming basis.

From a public policy standpoint, it makes eminent sense for the Commission to remove any duopoly restrictions, at least in the larger television markets. There is no risk that this would result in a lack of editorial diversity in these larger markets.

The top twenty-five television markets average close to fifteen or sixteen full-service television stations. Cable television MSOs propose a five hundred-channel universe in these markets. Then there is a prospect of five hundred satellite channels, the ever-expanding internet, then forty to fifty radio stations.

And these are just the video and audio outlets. I won't take time here to mention the print providers of editorial information in our large markets where there are few, if any, barriers to entry. The Department of Justice has all the legal and administrative machinery it needs to monitor the competitive conditions.

In sum, Mr. Chairman and Commissioners, a significant loosening of the duopoly LMA restrictions, starting with the larger television markets at a minimum, is long overdue. We're not asking for special consideration. We merely want regulatory parity.

And I would just like to add my comments to Mr. Marcus' comments that we very much support the venture capital fund and have focused a lot of our efforts with Belo in management training for minority and women within our company as a means of training very qualified executives.

Thank you.

CHAIRMAN KENNARD: Thank you, Mr. McCarthy. Mr. Schwartzman.

MR. SCHWARTZMAN: Thank you very much, Mr. Chairman. Before the clock runs, let me apologize to the Commission and staff. I was so proud of myself that I had mastered our new Adobi software and integrated the graphic exhibits that I had with the WordPerfect file of my testimony that I used the last draft of the testimony with a lot of typos and a couple of genuinely incoherent sentences in it, more incoherent than usual.

I will try to get you something that actually scans. An I apologize for that. But the graphics are great.

Thank you. I am going to scrap most of those prepared remarks which is one of the reasons I am concerned about getting it to you, because I think given where we are in the day, maybe I can try to touch on a couple of the things that have come up productively.

First, I will incorporate by reference what I wind up saying at just about every one of these events, as well as on the Hill: The best stations in the country doing the best service show up at these hearings, in large part because they are the only stations that think it's important to be able to take high-level executives' time to commit to writing testimony, preparing it, sending it to Washing, and care about looking good. And they stand here and tell you what a great job they do, and they do.

But this is not about those stations. This is about the thirty percent of the stations that we found have no local newscasts whatsoever. This is about the twenty-five percent of the stations we've found that have no locally originated programming whatsoever, television stations in this country.

That's why you need to have a regulatory scheme that does no additional obligations on these broadcasters but nonetheless, does not allow concentration at the expense of the public.

I'm going to say that the kind of waiver discussion we had before today, earlier today, it is possible to base waivers on content-neutral, quantitative commitments to provide certain kinds of programming. To say locally-originated programming should not cause problems with Commissioner Powell's viscera, I don't think it's a very straight-forward kind of thing.

You can extract commitments for the kind of programming that's being described today for LMAs and eliminate those LMAs which are doing nothing, absolutely nothing for their communities.

The model of newspaper joint ownership agreements resembles LMAs in some way except that there is a very strict regime providing separation that doesn't exist with LMAs. LMAs here are merely a devise for evading the Commission's rules. If the Commission wants to define ownership, wants to have a waiver policy, fine. If it wants to have a system that simply promotes evasion, then it should stick with LMAs, I think to everybody's detriment.

Prophylaxis, defining these things, having a waiver policy, works. It will avoid the most painful issue you have in this docket which is divestiture. The reason the LMA divestiture issue is before you is because of the Commission's failure to adopt rules.

We raised the question of LMAs in 1991 and the Commission said at the time, "Well, there is only one TV LMA that we know of. If this ever becomes a problem, we can deal with it then." Well, now you have to deal with it. And it was a mistake not to have dealt with it then.

And to say, "Well, we made investments", as Mr. Miller said, and -- and those people's stock is going to go down, they made a bet. I've lost a couple of lunches betting on what this Commission is going to do. And if those people in the stock market made the wrong bet, that's unfortunate. But it's no basis for you to enforce the law and to read the law as it was written.

I'm here and you're there because the

Communications Act contemplates that you have to make difficult decisions. Relaxed local ownership may well generate economic efficiencies, but it doesn't translate into more or more varied programming. And it most certainly does not replenish the creative gene pool to ensure that broadcasting can stay in touch with ethnic and social diversification of American society.

Don't look at what they say about how terrible the problems are; Mr. McCarthy's concerns about the costs of trying to compete with all these other non-local program services. If -- if Belo wants to pay a five percent franchise fee, commit four percent of its capacity to least access and wants to take one-third of its capacity for what amounts to the fairness doctrine, must-carry, if they want to pay that franchise fee, I'll happily apply the same standard, looser regulations he calls for for cable.

History is relevant. In the '80s, the Commission lifted the rules. There is a frenzy. Debt-service, not program-service, became important and it's become important now. The recession hit in 1991. OPP wrote a report which said, "Oh, well, the broadcasting industry is dead; we have to give them relief." Here we are again, same place. And I think that you need to avoid making the same kinds of mistakes again.

I've put into my materials what the Television

Bureau of Advertising says about the strength and the unique nature of local broadcasting; how it and only it delivers ninety-seven percent of the American homes. Cable, internet, none of these other services get the same advertising and have the same ability to serve their community as they do.

Look at the facts sheet. Look what TBB says itself. Look at what the stations and the broadcasters tell Wall Street. They don't say, "We're really suffering." Stock market prices are going up, as we've noted. The valuations are way up. Wall Street bets that this industry is going to make money, a lot of money.

And I think that you can work within that framework to decide a system that is going to preserve a very viable, effective broadcasting system. As I often say in this room -- or in the Commission Meeting Room, not this room -- we have the best system in the world because of, not in spite of, the Communications Act of 1934.

You can adopt your scheme to those rules, leave a viable industry; but not abandon diversity, not abandon localism. That's what you're being asked to do and you shouldn't bite.

CHAIRMAN KENNARD: Thank you, Mr. Schwartzman.

COMMISSIONER TRISTANI: Mr. Chairman?

CHAIRMAN KENNARD: Yes?